IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 1ST OCTOBER 2007 / 9TH ASWINA 1929

CRL.A.No. 1692 of 2007(B)

CC.2678/2001 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

APPELLANT: COMPLAINANT

KERALA STATE INDUSTRIAL DEVELOPMENT CORPORATION LIMITED, CHOICE TOWERS, MANORAMA JUNCTION, KOCHI-16, REP. BY ITS ASSISTANT MANAGER (LEGAL) G.SANJAY, NOW REPRESENTED BY MRS.V.R.USHA.

BY ADV. SRI.K.A.JALEEL
SRI.N.K.POULOSEKUTTY

RESPONDENTS: ACCUSED & STATE

1. M/S.AMA FOOD PRODUCTS (P) LTD., XL/4216, STAR COTTAGE, ST.ALBERTS SCHOOL ROAD, KOCHI-31, REPRESENTED BY ITS MANAGING DIRECTOR, A.M.SADHIQUE.

2. SHRI.A.M.SADHIQUE, S/O.SRI.ARACKAL MUHAMMED, MANAGING DIRECTOR, M/S.AMA FOOD PRODUCTS (P) LTD., RESIDING AT STAR COTTAGE, ST.ALBERTS LANE, KOCHI-31.

3. SRI.A.M.SALAM, S/O.SRI.ARACKAL MUHAMMED, DIRECTOR, M/S.AMA FOOD PRODUCTS (P) LTD., RESIDING AT STAR COTTAGE, ST.ALBERTS LANE, COCHIN.

4. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY P.P.SRI.THOMAS JOHN AMBOOKKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl.A. No. 1692 of 2007

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Dated this the 1st day of October, 2007

JUDGMENT

The appeal is filed by the complainant against the acquittal order passed in C.C.No. 2678/2001 on the file of the Court of the Chief Judicial Magistrate, Ernakulam. The respondents were acquitted on the sole ground of the absence of the appellant. In the order it is stated that the case posted for hearing and the presence of the appellant or counsel was necessary to proceed with the case. It is submitted that the court below has committed serious error in dismissing the complaint and acquitting the respondents on the ground of absence of the appellant. It is also submitted that the entire evidence has been adduced and the case was posted for hearing on 8-6-2007 and on the same day the impugned order was passed. It is relevant to note that the evidence was almost over and the case was posted for hearing. If that be so, the trial court ought to have considered the evidence adduced and to take a decision on merit under section 255 Cr.P.C.

2. In the above circumstances, the order under challenge is not sustainable. Hence, the impugned order is set aside and the matter is remanded to the trial court for fresh consideration as per law. Though notice was served on respondents 1 to 3, there is no appearance on their behalf. Hence, the trial court is directed to issue fresh notice to respondents 1 to 3.

The appellant shall appear before the court below on 17-11-2007

The appeal is allowed as above.

The records of the case shall be forwarded to the trial court forthwith.

K. Thankappan,
Judge.

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K. Thankappan,J.

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Crl.A.No.

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Judgment
-7-2007